

National Surface Transportation and Innovative Finance Bureau
Interim Implementation Notification
June 2016

I. Introduction

Among the provisions included in the Fixing America's Surface Transportation (FAST) Act is the establishment of a new National Surface Transportation and Innovative Finance Bureau (the Bureau) within the Office of the Secretary of Transportation (OST) that will align, coordinate and consolidate aspects of the U.S. Department of Transportation's (DOT) existing surface transportation innovative finance programs. The FAST Act calls for the Bureau to fulfill a number of specific responsibilities, including the following:

- Provide assistance and communicate best practices for financing and funding opportunities to entities eligible under DOT infrastructure finance programs;
- Administer the application process for three existing DOT infrastructure finance programs;
- Administer the application process for a new Nationally Significant Freight and Highway Projects program which has been renamed the Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) program;
- Reduce uncertainty and delays related to environmental reviews and permitting, as well as project delivery and procurement risks and costs;
- Increase transparency and the public availability of information regarding projects financed by the DOT infrastructure finance programs and the new Nationally Significant Freight and Highway Projects program; and
- Promote best practices in procurement for projects financed by the DOT infrastructure finance programs and the new Nationally Significant Freight and Highway Projects program by developing benchmarks related to procurement.

The Bureau will build on a number of actions that the Department has taken to advance these responsibilities, including the establishment of DOT's Build America Transportation Investment Center (BATIC) in 2014 as a single point of contact and coordination for States, municipalities, and project sponsors looking to utilize Federal transportation expertise, apply for Federal transportation credit programs, and explore ways to access private capital in public-private partnerships (P3s). Notably, in their explanatory statement of the FAST Act, Congressional conferees explicitly recognized the accomplishments of the Obama Administration's Build America Investment Initiative to increase infrastructure investment and economic growth.

The FAST Act also establishes a new Council on Credit and Finance (the Council) chaired by the Deputy Secretary of Transportation, which is charged with the review of innovative finance applications and the new Nationally Significant Freight and Highway Projects program, as appropriate; making recommendations to the Secretary of Transportation; and reviewing approved projects on a regular basis. The Council will build on the existing Credit Council that DOT had previously established through administrative measures.

To assist with establishing the Bureau, the FAST Act provides the Secretary with certain authorities to transfer budgetary resources, if necessary, to carry out the duties of the Bureau.

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These authorities are available for two years. The FAST Act requires that, within 90 days of enactment and in 90-day intervals thereafter, DOT notify Congress on how these authorities are being implemented, and any additional legislative actions that may be needed. This document is the second 90-day notification.

Per the FAST Act, these 90-day notifications provide updates on the offices eliminated within the Department and the rationale for elimination of the offices; the offices and office functions consolidated and the rationale for consolidation of the offices and office functions; transfers of staffing and budgetary resources under the Bureau statute, and the rationale for such transfers; and any additional legislative actions that may be needed.

The first 90-day notification highlighted the steps that the Department took between December 4, 2015, and March 2, 2016 to ensure the process for implementing these authorities is carefully considered and comprehensive. The work completed during this time established the groundwork for implementation.

This second 90-day notification provides updates on the Bureau Implementation Initiative, including the collaborative work of the Executive Committee, the Steering Group, and the external consultant support team.

II. Implementation Steps Completed During the March 2016 - June 2016 Timeframe

a. Bureau framework development

The Bureau Implementation Initiative continues to be led by an Executive Committee comprising DOT's BATIC Executive Director, Chief Financial Officer, Chief of Staff, and Acting Under Secretary of Transportation for Policy. During the interim period prior to the full establishment of the Bureau, the Executive Committee will serve in the program oversight roles envisioned for the Bureau.

The Administrators (or the designates) of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Maritime Administration (MARAD) serve on the Bureau Advisory Group, which meets regularly to consult on key matters and participates with the Executive Committee members in updates with the DOT Secretary.

The Executive Committee is developing a clear and comprehensive plan for implementation that is scheduled for completion in Summer 2016.

b. BATIC release of P3 Successful Practices Report

In early March, the BATIC team released a Successful Practices for P3s report (https://www.transportation.gov/sites/dot.gov/files/docs/P3_Successful_Practices_Final_BAH.PDF) that describes how government agencies can successfully work with the private sector to

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deliver transportation facilities that protect the public interest. A key Bureau responsibility is to “work with the modal administrations within the Department, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships.” As one of the first P3 resources released since the FAST Act passage, this report fully supports the mission of the Bureau.

c. Continuation of project development processes started under BATIC

As part of DOT’s commitment to the President’s Build America Investment Initiative, the Department created BATIC in the summer of 2014. BATIC was established to engage with local governments and private sector investors to help drive investment in U.S. infrastructure. Since the summer of 2015, BATIC, led by an Executive Director and supported by full time staff, serves as the single point of contact and coordination for States, municipalities, and other project sponsors seeking Federal transportation program expertise, Federal transportation credit programs, and information about innovative project delivery approaches, such as P3s. One of BATIC’s key responsibilities is coordinating with the various DOT credit programs to ensure project sponsors and applicants can navigate the processes, from first consultation to closing, more easily. Since BATIC’s formation, DOT has closed over \$8 billion in financing to support \$21 billion in projects. BATIC is also providing assistance to projects large and small by:

- Increasing access to non-traditional credit applicants, such as port projects;
- Facilitating interdepartmental coordination for mega-projects that need to access multiple DOT credit programs;
- Completing model contract guides for user fee and availability payment P3 concessions; and
- Delivering resources to build capacity in project finance through the BATIC Institute, which is a collaborative initiative with the American Association of State Highway and Transportation Officials (AASHTO). Resources include:
 - Innovative Infrastructure Finance Case Studies webinar series, such as the recent webinars on the Denver Union Station project and the Denver Eagle P3 project.
 - Regional peer-to-peer knowledge exchanges for project sponsors, such as the upcoming Transit Oriented Development (TOD) exchange planned for June 2016.

d. Implementation of credit program provisions in FAST Act

DOT has continued with ongoing efforts to ensure greater efficiency and effectiveness of the credit programs. Given the program changes outlined in the FAST Act, DOT developed a new Notice of Funding Availability (NOFA) for the Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance, which was released on March 11, 2016. To supplement the information provided in the NOFA, TIFIA is also incorporating relevant updates into program guidance. This includes program guidance for TOD and a streamlined application process.

DOT has made a streamlined application review process available to entities seeking TIFIA credit assistance. This streamlined process, which DOT continues to develop and refine, entails

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a tiered eligibility approach whereby certain entities that agree to use TIFIA's existing loan agreement templates and pledge well-established, highly-rated and project-independent sources of revenue may obtain faster lending decisions, with lower processing costs. These benefits are expected to be achieved, in part, through a reduction in the scope of legal and financial advisory services TIFIA typically hires to review these types of credit assistance requests. DOT also envisions providing access to the streamlined review process to a wider range of project types and sizes than are expressly required by the FAST Act.

Additional guidance for both the TIFIA and Railroad Rehabilitation and Improvement Financing (RRIF) programs, reflective of changes in the FAST Act, is under development. The credit program teams and the Bureau Implementation Steering Group are working closely to ensure greater consistency across FAST Act provisions for the credit programs.

e. Initial steps for consolidation of credit functions

The Department is continuing to work to optimize access to, and utilization of, the Federal transportation credit programs. The Department has initiated the consolidation of processes that support the TIFIA program, the RRIF program, and the Private Activity Bond (PAB) program. Efforts to move the policy oversight of the TIFIA Joint Program Office into OST were already well underway prior to enactment of the FAST Act. The overall consolidation and integration efforts will continue through Summer 2016.

f. Nationally Significant Freight and Highway Projects (i.e., FASTLANE) program implementation

The FAST Act requires that the Bureau administer the application process for the FASTLANE program. The Office of the Under Secretary of Transportation for Policy is currently administering the application process for this program, in coordination with other members of the Bureau Implementation Executive Committee. The Notice of Funding Opportunity (NOFO) for the FASTLANE Program was released on February 26, 2016, and applications were due on April 14, 2016. DOT received 212 applications. They are currently being evaluated for potential award. The Department anticipates making mandatory congressional notifications of proposed awards in Summer 2016.

The FAST Act did not provide any additional funding for the administration of the new FASTLANE program, nor did it authorize an administrative takedown from the \$800 million authorized in Fiscal Year 2016. Administrative funds are critical to ensure appropriate long-term oversight and administration of grant awards.

To provide the budgetary resources necessary to administer the application process for the Fiscal Year 2016 FASTLANE awards, under 23 U.S.C. 117(h)(3)(D)(ii), the Department has directed the transfer of \$500,000 from the Federal Highway Administration (\$300,000) and the Federal Railroad Administration (\$200,000) to the Office of the Secretary.

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III. Next Steps

DOT continues to develop a clear, comprehensive, long-term implementation plan for the Bureau. Additional interim steps that are identified during this period will be implemented on a timely basis.

Key ongoing steps include: the establishment of a framework and consolidated physical location within DOT headquarters for Bureau staff; an Executive Director search; and development of an initial process for coordination between the core Bureau functions. Updates on these efforts, plus additional interim steps, will be included in subsequent 90-day notifications.